

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2931 OF 1990

- 1(a). Smt.Indira Dattaram Patil,
aged about 68 years,
widow of late Shri Dattaram
Deoji Patil
- 1(b). Shri Krishnakumar Dattaram Patil
aged about 43 years,
son of late Shri Dattaram
Deoji Patil
- 1(c). Smt.Shaila Dattaram Patil,
aged about 35 years,
daughter of late Shri Dattaram
Deoji Patil
- Petitioners

V/s.

1. The Executive Officer,
Shree Siddhi Vinayak Ganpati
Temple Trust Management Committee,
Prabhadevi, Bombay-400 025.
2. Shree Siddhi Vinayak Ganpati
Temple Trust, Prabhadevi,
Bombay-400 025.
3. The State of Maharashtra,
Bombay.
4. The Official Trustee and
Administrator General,
P.W.D. Building, Fort,
Bombay.
- Respondents

Mr.Shailesh Shah with Ms.Mamta Sadh i/b Lilit Jain for
the Petitioners.

Mr.S.G. Surana with Mr.U.S. Upadhya for Respondent
Nos.1 and 2.

Mr.Sekhar Naphade, Senior Counsel with Mr.R.M.

Sawant, G.P. for Respondent No.3.

**CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.
DATED : 4TH MARCH, 2005.**

ORAL JUDGMENT (PER A.P. SHAH, J.) :

. This is a petition filed under Article 226 of the Constitution in which the petitioners challenge the constitutional validity of the Shree Siddhi Vinayak Ganpati Temple Trust (Prabhadevi) Act, 1980 (Maharashtra Act No.VI of 1981), hereinafter for brevity's sake called "the Act". The Petitioners are descendants of one Sunder Laxman Patil who was the founder of Shree Siddhi Vinayak Ganpati Temple, Prabhadevi, Mumbai. Their main contention is that the Act violates the fundamental rights guaranteed under Articles 25 and 26 of the Constitution to manage their own affairs in the matters of religion. It is also contended that the Act suffers from vice of arbitrariness and unreasonableness and violates Article 14 of the Constitution. The respondents to this Petition are, firstly, Shree Siddhi Vinayak Ganpati Temple Trust, a public trust deemed to have been constituted under the Act and the Executive Officer of the Management Committee of the said Trust. The State of Maharashtra, which exercises over all

control over the first and second respondent is impleaded as third respondent. The fourth Respondent is the Official Trustee who was the sole trustee of the Temple by virtue of the order passed in Suit No.217 of 1932. The Official Trustee has handed over the possession of Temple and its properties to the Management Committee constituted under the Act. The petition has been contested by the respondents on the ground that the Act does not, in any way, violate the fundamental rights of the petitioners. Therefore, the only question for consideration before us is whether the Act does or does not contravene the fundamental rights of the petitioners under Articles 14, 25 and 26 of the Constitution.

2. We shall presently set out the relevant provisions of the Act but before we do that, it is necessary to state a few facts with regard to the passing of the Act. It appears that the Temple of Shri Siddhi Vinayak was built by Sunder Patil, who died in 1870. During his life time the said Sunder Patil was managing and maintaining the Temple. After his death, his three sons Tukaram, Manik and Janu were managing the Temple. Janu died in 1928 and Tukaram and Manik died earlier. After the death of Janu, disputes arose between Jiwoobai, widow of Janu and

Kashinath, son of Manik regarding the right of management of the Temple and this resulted in Kashinath filing a suit being Suit No.217 of 1932 in this Court. That suit was compromised and a consent decree came to be passed on 7th February, 1936. Under the consent decree the Official Trustee of Bombay was appointed as the sole Trustee of the Temple and its properties and Jiwoobai was appointed as the first Manager of the Temple and its properties. The consent decree further laid down that after Jiwoobai a male member of the family of Sunder Patil would be appointed as Manager if found fit by the Official Trustee. The consent decree also required the Official Trustee to frame rules/scheme for the management of the Temple. It appears that on 29th January, 1938, Jiwoobai resigned as a Manager. She expired in 1941. Thereafter disputes arose between Kashinath and other members of Patil family on one hand and the Official Trustee on the other hand.

3. In August, 1955, the Official Trustee submitted an application to the Charity Commissioner for registration of the Temple as public trust under the provisions of the Bombay Public Trust Act, 1950. The application was allowed by the Charity Commissioner by order dated 26th September, 1955 and

the Temple came to be registered under the Bombay Public Trust Act. The members of Patil family challenged the registration of the Temple as a public trust. They carried the challenge to the High Court. By judgment and order dated 4th July, 1975, the High Court upheld the registration of the Temple as a public trust. Patil family then filed Special Leave Petition in the Supreme Court against the order of High Court, which also came to be dismissed and thus the order of the Charity Commissioner registering the Temple as a public trust stood confirmed. In the mean time by order passed by this Court dated 11th October, 1957, the Official Trustee was directed to hand over to Devji Patil, son of Kashinath the Temple and its properties as Manager of the Temple for the purposes of the management. The said order also directed that the scheme should be framed. Pursuant to the said order, Devjee Patil called upon the Official Trustee to hand over the Temple and its properties. The Official Trustee , however, maintained that said Devjee Patil cannot be appointed as a Manager unless a scheme is framed for the management of the Temple as directed by the Court.

4. By order dated 5th July, 1980, the Charity Commissioner finally framed a scheme for the temple

under Section 50-A of the Bombay Public Trust Act and under the said scheme appointed Maharashtra Executor and Trustee Company Limited as Custodian Trustee and vested the properties of the Trust in the Custodian Trustee and appointed a Board of Managing Trustees. This order was also challenged by Patil family and stay was obtained of the order sanctioning the scheme. The effect of this was that despite this Court as well as Supreme Court holding that the Temple is a public trust, the Patil family continued to treat the registration of the Temple as public trust as illegal and disputes continued between the Official Trustee and Patil family. The scheme framed by the Charity Commissioner was also stayed. Thus the scheme for management could not be framed even after lapse of 40 years. It is also seen from the Statement of Objects and Reasons of the Act that the Temple Trust over the period of time had acquired large properties and become very popular among the devotees but on account of continuous litigation, the growing income of the Trust could not be fully utilised. On 11th October, 1980, the Governor promulgated Shree Siddhi Vinayak Ganpati Temple Trust (Prabhadevi) Ordinance, 1980. The same is replaced by the present Act.

5. By operation of sub section 2 of section 1 the Act

came into force with effect from 11th October, 1980 i.e. " on the appointed day" under the Ordinance. Section 3 of the Act declares that on and from the appointed day, in place of the public trust registered under the Bombay Public Act by the name of Shree Ganpati Temple at Prabhadevi Road, Dadar, Bombay, a Trust by name of "Shree Siddhi Vinayak Ganpati Temple Trust (Prabhadevi)" shall be deemed to be reconstituted under the Act, and all properties, whether moveable or immovable of the Public Trust, which was being held and administered by the Official Trustee immediately before that day shall by virtue of this Act, stand transferred to and vested in the deity of Ganpati in the Temple for the purposes of the reconstituted Trust to be called the Temple Trust or the Trust, and, in place of the Official Trustee, the Executive Officer shall on behalf of the Committee be entitled to their possession and management from that day. Section 4 of the Act requires the Official Trustee to hand over the possession of the Temple and its properties to the Executive Officer of the Management Committee. The Management Committee constituted under section 5 of the Act is to be called "Shree Siddhi Vinayak Ganpati Temple Trust Managing Committee" and sub section 3 of section 5 provides that the State Government shall by notification in the

Official Gazette, appoint a Chairman, a Treasurer and not more than seven other members to form the Committee. Proviso to sub-section 3 lays down that the State Government may, by like notification, from time to time, increase the number of other members, but the total number of the members shall not exceed eleven. Section 8 prescribes the grounds for disqualification for membership as trustee. The State Government is empowered by this section to remove a member if it appears that he is a minor or is convicted by Criminal Court or of unsound mind or has direct or indirect interest in immovable property of Temple Trust or is a paid servant of Committee or has any interest in execution, supply or performance of any service undertaken by the committee in respect of the Temple Trust or is guilty of misconduct or is otherwise unfit.

6. Section 12 prescribes that a Gazetted Officer of the State Government should be appointed as the Executive Officer of the Committee. Section 13 lays down that the Executive Officer shall be the Chief Administrative Officer of the Committee and he shall be subject to control of the Committee and shall be responsible for the custody of all properties and records of the Temple Trust. Section 16 lays down

that subject to any general or special orders of the State Government, it shall be the duty of the Committee to manage the properties and affairs of the Temple Trust efficiently, to make proper arrangements for the conduct and performance of rituals, worship, ceremonies and festivals in the Temple according to the custom and usages, to provide necessary facilities and amenities to the devotees and to apply the income of the Trust to the objects and purposes for which the Trust is to be administered under this Act. Sub Section 2 of Section 16 further provides that in particular, but without prejudice to the generality of sub-section (1), the Committee :-

"(a) prepare the annual budget estimating the income and expenditure of the Trust and send a copy of it to the State Government ;

(b) maintain proper accounts and records of the properties and the income and expenditure of the Trust;

(c) cause the accounts of the Trust to be audited annually by the such person and by such date in the next succeeding year as the State Government may direct ;

(d) make regular payment of salaries, honorarium, fees and allowances and other sums payable to the members, Executive Officer and other officers and servants of the Committee from the Management Fund ;

(e) take measures for the recovery of lost property or any sums due to the Trust ;

(f) institute and defend any suits, prosecutions and other legal proceedings relating to the Trust in a Court or before a Tribunal or other authority ;

(g) inspect or cause an inspection to be made of the properties of the Trust, from time to time and to take prompt steps to remove any encroachments made on such properties ;

(h) supply such returns, statistics, accounts and other information with respect to the Trust as the State Government may, from time to time, require ;

(i) generally do all such acts as may be necessary for the purposes of proper management, maintenance and administration of the properties and affairs of the Trust."

Section 17 lays down the constituents which shall form a part of or paid into Trust Fund be called as "Shree Siddhi Vinayak Ganapati Temple Trust Fund" which shall vest in the deity of Ganapati.

7. It would, thus, to be seen that the ownership of the Temple and its properties whether moveable or immovable shall vest in the deity of Lord Ganapati in the Temple and the management of the Temple shall vest in the Committee to cater to the welfare of the devotees, proper and better management of the performance of the daily and periodical ceremonies and rituals. Section 18 lays down the guidelines for

utilisation of the Trust Fund and reads as follows :-

"18. (1) The Trust Fund shall be utilised by the Committee for all or any of the following purposes :-

(i) the maintenance, management and administration of the Temple and the properties of the Trust ;

(ii) the conduct and performance of the rituals, worship, ceremonies and festivals in the Temple according to the custom and usages ;

(iii) providing facilities and amenities to the devotees for darshan of the deity and for offering prayers or performing any religious service or ceremony in the Temple ;

(iv) repayment of any sums borrowed by the Committee, with the sanction of the State Government ;

(v) any sums required to satisfy and judgment, decree or award of any Court or arbitral tribunal ;

(vi) the payment of any taxes, rent, compensation, premia, charges and other sums payable by the Trust under any law for the time being in force.

(2) After making adequate provisions for the purposes referred to in sub-section (1) and after making similar provision for the objects, needs, requirements and improvements of the Trust in the near future, if there is a surplus in the Trust Fund, a portion of the surplus may be utilised by the Committee, from time to time, for all or any of the following purposes, namely :-

(i) development of the

properties of the Trust and acquisition of movable or immovable properties for the purposes of the Trust ;

(ii) construction and maintenance of rest houses for the accommodation and use of the devotees ;

(iii) with the previous sanction of the State Government the establishment and maintenance of any educational institutions, hospitals, dispensaries, homes for destitute persons or persons physically disabled or other charitable or religious institutions, or giving financial aid to such institutions or persons ;

Provided that before applying to the State Government for previous sanction for giving financial aid to any individual institution or persons the Committee shall satisfy itself that the surplus funds are or are being adequately spent first for other purposes specified in clauses (i), (ii) and (iii) of this sub-section, and then in the application give details of such expenditure and the different grants proposed to be given to different institutions and persons and the reasons why such institutions and persons have been selected."

8. Section 22 gives power to the State Government to make the rules under the Act. Section 24 envisages that the Act shall have effect, notwithstanding anything contained in the Bombay Public Trust Act, 1950, the Official Trustees Act, 1913 or any other law for the time being in force, or in any scheme of management framed thereunder, or in any judgment,

decree or order of any Court, Tribunal, Charity Commissioner or other competent authority or in any custom or usage.

9. On this factual and legal background the question is whether the Act violates the fundamental rights of the petitioners. The object of the Act is to regulate the management and administration of the temple and the temple fund for matters connected therewith and incidental thereto. The Act ensures and enjoins the Committee, Executive Officer assisted by all the staff to ensure due and proper performance of worship, services, rituals and ceremonies of Lord Ganpati in accordance with the custom and usages. The Act does not invest the Government with any power to interfere with the religious part of the management or daytoday administration of the temple. The power to supervise and safeguard the interest of the temple is a secular function which has been entrusted to the Management Committee constituted under section 5 of the Act. The provisions of sections 16 and 18 provide sufficient guidelines for the Management Committee in administration of the temple. In a given case if the Management Committee acts in a manner objectionable the same would be amenable for correction in a proper forum. Only secular part has been entrusted to the

Management Committee, Executive Officer etc. appointed as per the Act. This entrustment to the management cannot be said to be constituted for the acquisition of the property or extinguishment of the right to the property.

10. The petitioners have complained of violation of Articles 25 and 26 of the Constitution. The right under Article 26 of the Constitution is available to a religious denomination. Mr. Shah, learned counsel for the petitioners was unable to show that Ganapati Temple is of any particular religious denomination. In fact no such claim is made in the petition. In Commissioner H.R.E. vs Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt; AIR 1954 SC 282, the term "denomination" is construed to mean collection of individuals or class together under the same name, a religious group or body having common faith and organisation and designated by a distinctive name. Lord Ganpati is worshipped by all sections of Hindu society in all parts of India. We, therefore, fail to see how Article 26 of the Constitution is attracted to the facts of the present case. Reliance placed on Article 25 is equally misplaced. Article 25(2) lays down that nothing in Article 25(1) shall prevent the State from making any law, regulating or restricting

any economic, financial, political or other secular activities which may be associated with religious practice. Clause (2) further provides that the State can enact law for the purpose of providing for social welfare and reform. The Act squarely falls within the purview of clause (2) of Article 25 as it deals with the secular, financial and economic matters relating to the temple of Lord Ganpati. The Act provides for reconstitution of the Trust, appointment and removal of trustees, creation of trust properties and its utilisation for the purpose of the trust and other matters connected with the management of the said temple and its properties. The impugned Act does not in any manner interfere with the religious or any right of a citizen for worshipping the deity or for carrying out the religious activities in the said temple.

11. In *Raja Bira Kishor Deb Vs. State of Orissa*; AIR 1964 SC 1501, the Court held that section 6 of Sri Jagannath Temple Act, 1954 extinguishes the hereditary right of the Raja and entrusts secular management of the Temple of Lord Jagannath at Puri to the Committee of which he remains the Chairman. It was held that the superintendence of the Temple is not the property. It carried no beneficial interest or enjoyment of the

property with it. The right was not acquired by the State. The whole of the right to manage the Temple was extinguished and in its place another body for the purpose of administration of the properties of the Temple was created. In other words, the affairs of the functionary are brought to an end and another functionary had come into existence in its places. Such process cannot be said to constitute the acquisition or extinguishment of office or the vesting of the right in such persons holding that office. In that context, the contention that the Act interfered with religious affairs of the Temple offending Article 19(1) of the Constitution was rejected. The contention that it is a denominational Temple was also not accepted. In *S.P.Mittal Vs. Union of India*; AIR 1983 SC 1, the Constitution Bench was to consider whether Aureville (Emergency Provisions) Act was violative of Article 26 of the Constitution. Considering speeches and writings of Shri Aurobindo on religious beliefs it was held that it was not a religious denomination. The Act was held to be incidental to the proper administration. It was not violative of Articles 25 and 26 of the Constitution.

12. The same view is taken in *Dharam Das etc. Vs. The State of Punjab and others*; AIR 1975 S.C.1069 and

Sri Sri Sri Lakshamana Yatendrulu and others Vs. State of A.P. and another; (1996) 8 SCC 705. In Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and others Vs. State of U.P. and others; (1997) 4 SCC 606, the Court upheld the constitutional validity of Shri U.P. Sri Kashi Vishwanatha Temple Act, 1983 which is similar to the provisions of the present Act. The Court observed on page 632 of the report as under:

"Right to religion guaranteed by Articles 25 and 26 is not absolute or unfettered right to propagate religion which is subject to legislation by the State limiting or regulating every non religious activity. The right to observe and practise rituals and right to manage in matters of religion are protected under these articles. But right to manage the Temple or endowment is not integral to religion or religious practice or religion as such which is amenable to statutory control. These secular activities are subject to State regulation but the religion and religious practices which are an integral part of religion are protected. It is a well settled law that administration, management and governance of the religious

institution or endowment are secular activities and the State could regulate them by appropriate legislation."

13. In the light of this settled legal position, challenge based on Articles 25 and 26 of the Constitution must be rejected.

14. Shri Shah, next submitted that purported objects for passing the Act as enumerated in the Statement of Objects and Reasons do not stand the test of reasonableness. They do not justify drastic action on the part of the State Legislature in enacting the Act to take over the management of what was originally a private religious trust and then a public Trust. According to the learned Counsel, the State's intervention in a given case may be necessary if there are allegations of gross mismanagement and/or misappropriation of trust fund/property. However, in the case of Siddhivinayak Temple there is not a whisper of mismanagement or misappropriation. Merely because wider welfare activities are possible, there is no justification for the State to take over the management of the trust. Learned Counsel submitted that the other reason given viz. to bring an end to continuous litigation, also cannot be a reason for

enactment of the Act. The original petitioner and his father were forced to resort to litigation and had not indulged in frivolous or vexatious litigation. In any event, according to Mr. Shah a citizen has right to pursue legal remedies and assert his legal rights as he desires. It is, therefore, clear that the enactment of the Act for the ostensible reasons stated in the Objects and Reasons is an exercise of legislative power which is clearly arbitrary and unreasonable. We are unable to accept the submission of the learned counsel. In the first place, there is always a presumption that the law enacted by the legislature is valid. It is for the petitioner to show how the law violates any of the provisions of the Constitution. The legislative power in enacting laws is subject to two constraints; (i) whether the legislature has competence under the Constitution to enact the law? and (ii) whether the law violates any of the fundamental rights or other provisions contained in the Constitution? In the instant case there is no challenge to the legislative competency in that the legislative power is clearly relatable to entries 10 and 28 of List III of VIIth Schedule of the Constitution.

15. In R. Vs. Burah (1878) V.I.A.178, the Privy

Council while holding that it is not permissible for the Courts to enlarge constructively conditions and restrictions on legislative power observed:

"The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament, which created it and it can of course, do nothing beyond the limits which circumscribe these powers. But, when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself. The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done in legislation, within the general scope of the affirmative words which give the power, and if it violates no express condition or

restriction by which that power is limited (in which category would, of course, be included any Act of the Imperial Parliament at variance with it) it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions."

The decision in R vs. Burah was affirmed by the majority of Judges in Kesavananda Bharti Vs. State of Kerala; AIR 1973 S.C. page 1461.

16. The Legislative entries in VIIth Schedule to the Constitution do not limit the description of law that the legislature may take upon any of the subjects assigned to it. The legislative power so given is plenary and it is not permissible for the Court to imply any condition or restriction in the grant of legislative power. In Sardar Sarup Singh and others Vs. State of Punjab and others; AIR 1959 SC 860, the Court while dealing with the constitutional validity of section 148-B of Punjab Sikh Gurdwaras Act, 1925. observed; "... whatever justification some people may feel in their criticisms of the political wisdom of a particular legislative or executive action, the Court cannot be called upon to embark on an enquiry into

public policy or investigate into questions of political wisdom or even to pronounce upon motives of the legislature in enacting a law which it is otherwise competent to make."

17. Thus, the enactment of law and its contents is a matter of legislative policy and the same is beyond the pale of judicial scrutiny. In any event it is seen there was enough justification to warrant the legislative intervention. There is no dispute that the scheme for management of the Temple could not be finalised for more than 40 years due to the disputes amongst the parties. Even the Scheme framed by the Charity Commissioner under sec.50(A) of the Bombay Public Trust Act came to be stayed as a result of the disputes between the parties. Moreover over the years the Temple became very popular amongst the devotees and income of the temple was growing and, therefore, it was necessary to make better arrangement and provide better facilities to the devotees and pilgrims and to utilise surplus income of the Temple for social welfare activities and other purposes of the Trust. The Act has been enacted in exercise of sovereign right of the State given by Article 25(2) to deal with and regulate the financial, economic and other secular matters relating to the temples and question of any

violation of Art.14 does not arise.

18. Shri Shah, also argued that the Act confers unrestricted powers upon the Management Committee and Executive Officer and whenever such unbridled power is given, there are possibilities of abuse of power. He pointed out that section 25 of the Act, has given effect to the provisions of the Act notwithstanding anything contained in the Bombay Public Trust Act. Therefore, according to Shri Shah there will not be any control of any independent agency or authority like the Charity Commissioner. He submitted that the Act confers blanket powers on the State without any supervision or control and this is in contrast to similar Acts, like Pandharpur Temples Act, 1973, where the control of the Charity Commissioner is retained. We have carefully gone through the entire scheme of the Act and we are of the opinion that the Charity Commissioner's powers are not completely taken away. It is open for the Charity Commissioner to call for yearly returns from the Temple Trust and if he finds any irregularity he may make a report to the State Govt. or bring the matter before appropriate forum. We may also mention that in a Public Interest Litigation being Writ Petition No.2764 of 2003 filed by Kewal R.Semlani, this Court has appointed an

Advisory Committee headed by the retired Judge of the High Court to deal with the applications for financial aid received by the Siddhivinayak Trust. In principle the State has no objection if the committee is continued to deal with such applications from various institutions. Under the circumstances, the submission that the Act has conferred unbridled power on the Committee or Executive Officer cannot be accepted.

19. Shri Shah lastly submitted that the temple was founded by the predecessor in title of the petitioner Sunder Patil. Therefore, atleast one member of Patil family should be taken on the Management Committee. The petitioners are at liberty to make a representation to the State Govt. in that behalf and the State Govt. is directed to consider the request sympathetically and take appropriate decision in that behalf within a period of 3 months from the date of its receipt.

20. In the result, constitutional challenge to the provisions of the Act fails and the petition is accordingly dismissed with no order as to costs.

O.O.C.J.
Writ Petition No. 2931 of 1990

Date of Judgment: 4th March, 2005.

For approval and signature of:

The Hon'ble Mr.A.P.SHAH J.

The Hon'ble Mr.S.J.VAZIFDAR J.

1. Whether the Reporters of the local papers may be allowed to see the judgment/order?
2. Whether to be referred to the Reporters or not?
3. Whether Their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judges?
6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad and Goa offices?

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